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8 **IN THE UNITED STATES DISTRICT COURT**  
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10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
11 **(SOUTHERN DIVISION—HONORABLE DAVID O. CARTER)**

12 MOHSEN REIHANIFAM,

13 Plaintiff,

14 v.

15 FRESINIUS MEDICAL CARE  
16 NORTH AMERICA, BEN LIPPS, an  
17 individual, R. MAURICE POWELL,  
18 an individual,

Defendants.

CASE NO.: SACV12-1580-DOC  
(JPRx)

CONFIDENTIALITY ORDER

Hearing: [None scheduled.]

Before: Hon. Jean P. Rosenbluth,  
Magistrate Judge

Trial Date: February 18, 2014

19 WHEREAS the parties have stipulated that disclosure and discovery activity  
20 in this action are likely to involve production of Fresenius Medical Care North  
21 America's confidential research, development, commercial, proprietary, trade secret  
22 or private business information, including but not limited to source code and other  
23 confidential technical information, and financial and other private information  
24 related to Plaintiff, for which special protection from public disclosure and from use  
25 for any purpose other than this litigation is warranted;

26 WHEREAS the parties have stipulated to entry of the following  
27 Confidentiality Order;  
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1           IT IS HEREBY ORDERED that the terms and conditions of this  
2 Confidentiality Order shall govern the handling of documents, depositions,  
3 deposition exhibits, interrogatory responses, admissions, and any other information  
4 produced, given or exchanged by and among Mohsen Reihanifam (“Reihanifam”)  
5 and Fresenius Medical Care North America, Ben Lipps, and R. Maurice Powell  
6 (“Defendants”) (collectively the “parties”), and third parties to the above-captioned  
7 litigation (“this Litigation”), in connection with discovery in this Litigation (this  
8 information hereinafter referred to as “Discovery Material”).

9           1.     **Applicability of Order:** This Order shall be applicable to and govern  
10 all depositions, documents, information or things produced by a party or third party  
11 in connection with this Litigation in response to requests for production of  
12 documents, answers to interrogatories, responses to requests for admissions, answers  
13 to deposition questions and all other discovery taken pursuant to the Federal Rules  
14 of Civil Procedure or other information that the Disclosing Party designates as  
15 Confidential or Highly Confidential furnished, directly or indirectly, by or on behalf  
16 of any party or any third party witness as part of discovery in this action. As used  
17 herein, “Producing Party” or “Disclosing Party” shall refer to the parties to this  
18 action and to third parties that give testimony or produce documents or other  
19 information, and “Receiving Party” shall refer to the parties to this action and to  
20 third parties that receive such information.

21           2.     **Use of Discovery Material:** Discovery Material and information  
22 derived therefrom shall be used solely for purposes of this Litigation, including any  
23 appeal and retrial, and shall not be used for any other purpose, including, without  
24 limitation, any business or commercial purpose or any other litigation, prosecution  
25 of patents or offering strategic advice concerning patent prosecution. Any person or  
26 entity in possession of Discovery Material designated Confidential or Highly  
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1 Confidential (defined below) shall maintain those materials in accordance with  
2 Section 16, below.

3 3. Any Producing Party may designate any Discovery Material as  
4 “Confidential” or “Highly Confidential” under the terms of this Order if the  
5 Producing Party in good faith reasonably believes that such Discovery Material  
6 contains non-public, confidential, personal, proprietary or commercially sensitive  
7 information that requires the protections provided in this Order (hereinafter  
8 “Confidential Material” or “Highly Confidential Material”).

9 4. **Confidential Material:** For purposes of this Order, information  
10 considered to be Confidential Material includes any information that a party or third  
11 party believes in good faith to be confidential or sensitive information, including,  
12 but not limited to, trade secrets, research, design, development, financial, technical,  
13 marketing, planning, personal, or commercial information, as such terms are used in  
14 Rule 26(c) of the Federal Rules of Civil Procedure and any applicable case law  
15 interpreting Rule 26(c).

16 5. **Highly Confidential Material:** For purposes of this Order,  
17 information considered to be Highly Confidential Material shall include, but is not  
18 limited to, any Confidential Material as defined in Section 4 which also includes  
19 source code, microcode, circuit schematics, masks, net-lists, layouts or extremely  
20 sensitive, highly confidential, non-public information, consisting either of trade  
21 secrets or proprietary or other highly confidential business, financial, regulatory, or  
22 strategic information (including information regarding business plans, technical  
23 data, and potential strategic transactions), the disclosure of which would create a  
24 substantial risk of competitive or business injury to the Producing Party.

25 6. **Designating Confidential Material or Highly Confidential**  
26 **Material:** The designation of Discovery Material as Confidential Material or Highly  
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1 Confidential Material for purposes of this Order shall be made in the following  
2 manner:

3           a.       **Documents:** In the case of documents or other materials (apart  
4 from depositions or other pre-trial testimony), designation shall be made by  
5 affixing the legend “Confidential” or “Highly Confidential” to each page  
6 containing any Confidential or Highly Confidential Material, respectively.

7           b.       **Deposition and Other Proceedings:** In the case of depositions  
8 or other pre-trial testimony, designation of the portion of the transcript  
9 (including exhibits) which contains Confidential Material or Highly  
10 Confidential Material shall be made (i) by a statement to such effect on the  
11 record during the proceeding in which the testimony is received, or (ii) by  
12 written notice served on counsel of record in this Litigation within fourteen  
13 (14) business days after the receipt of the draft transcript of such proceeding.  
14 However, before such 14 day period expires, all testimony, exhibits and  
15 transcripts of depositions or other testimony shall be treated as Highly  
16 Confidential Material. All portions of deposition transcripts not designated  
17 Confidential Material or Highly Confidential Material as provided in  
18 subparagraph 6(b)(i) or (ii) herein shall be deemed not confidential. Every  
19 person given access to Confidential Material, Highly Confidential Material, or  
20 information contained therein shall be advised that the information is being  
21 disclosed pursuant and subject to the terms of this Order and may not be used  
22 or disclosed other than pursuant to the terms thereof. Persons who do not fall  
23 under one of the subparagraphs of Sections 9 and 10 may not be shown  
24 Confidential or Highly Confidential Material at a deposition or other  
25 proceeding absent notification, by the party seeking to make such disclosure  
26 to the Producing Party, at least five (5) business days prior to the deposition  
27 or other pre-trial proceeding. If the Producing Party challenges such  
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1 disclosure, the parties shall first try to resolve the dispute in good faith on an  
2 informal basis. If the dispute cannot be resolved, the Producing Party may  
3 request appropriate relief from the Court. While such relief is pending, the  
4 restrictions in Sections 9 and 10 shall remain in place. The parties may  
5 modify this procedure for any particular deposition or other testimony,  
6 through agreement prior to such deposition or proceeding, or agreement on  
7 the record at such deposition or proceeding, without further order of the  
8 Court.

9 c. **Non-Paper Media:** Any Confidential Material or Highly  
10 Confidential Material produced in non-paper media (e.g., videotape, audio  
11 tape, computer disk, etc.) may be designated as such by labeling the outside  
12 of such non-paper media as "Confidential" or "Highly Confidential." In the  
13 event a Receiving Party generates any "hard copy" transcription or printout  
14 from any such designated non-paper media, such party must stamp each page  
15 "Confidential" or "Highly Confidential," and the hard copy, transcription or  
16 printout shall be treated as it is designated.

17 d. **Inadvertent Disclosure:** The inadvertent failure to designate  
18 Discovery Material as Confidential or Highly Confidential does not constitute  
19 a waiver of such claim and may be remedied by prompt supplemental written  
20 notice upon discovery of the inadvertent disclosure, with the effect that such  
21 Discovery Material will be subject to the protections of this Order. The  
22 Receiving Party shall exercise best efforts to ensure that copies it makes of  
23 Discovery Material produced to it, and copies made by others who obtained  
24 such Discovery Material directly or indirectly from the Receiving Party,  
25 include the appropriate confidentiality legend, to the same extent that the  
26 Discovery Material has been marked with the appropriate confidentiality  
27 legend by the Producing Party.  
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1           7.     The designation of Discovery Material by a party as “Confidential” or  
2 “Highly Confidential” shall constitute a representation by that party that the  
3 Discovery Material has been reviewed by an attorney for the Producing Party and  
4 that the attorney made a good faith effort to make the appropriate confidentiality  
5 designation.

6           8.     Every person given access to Confidential Material, Highly  
7 Confidential Material or information contained therein shall be advised that the  
8 information is being disclosed pursuant and subject to the terms of this Order and  
9 may not be used or disclosed other than pursuant to the terms thereof.

10          9.     **Persons With Access to Confidential Material:** Discovery Material  
11 designated “Confidential” may be disclosed, summarized, described, characterized  
12 or otherwise communicated or made available in whole or in part only to the  
13 following persons:

14               a.     Counsel of record in this action and attorneys at outside law  
15 firms and paralegal assistants, technical, administrative and clerical  
16 employees working under the direct supervision of such attorneys;

17               b.     Subject to Section 11 hereof, experts or consultants necessary to  
18 assist counsel for parties that have appeared in this Litigation and who have  
19 signed the “Agreement Concerning Information Covered by Confidentiality  
20 Order” attached hereto as Exhibit A;

21               c.     The parties to this Litigation, provided that all such counsel or  
22 employees have signed the “Agreement Concerning Information Covered by  
23 Confidentiality Order” attached hereto as Exhibit A;

24               d.     The Court, persons employed by the Court, and court reporters  
25 transcribing the testimony or argument at a hearing, trial or deposition in this  
26 action or any appeal therefrom;

1 e. Graphics, translation, or design services retained by counsel for  
2 purposes of preparing demonstrative or other exhibits, provided such services  
3 have signed the "Agreement Concerning Information Covered by  
4 Confidentiality Order" attached hereto as Exhibit A;

5 f. Persons employed by jury or trial consulting services, provided  
6 such persons have signed the "Agreement Concerning Information Covered  
7 by Confidentiality Order" attached hereto as Exhibit A;

8 g. Commercial copy vendors retained by counsel for purposes of  
9 this Litigation, provided such vendors have signed the "Agreement  
10 Concerning Information Covered by Confidentiality Order" attached hereto as  
11 Exhibit A;

12 h. Any person indicated by a document to be an author, addressee,  
13 or copy recipient of the document, or as to whom there has been testimony,  
14 whether at deposition or trial, or by declaration or affidavit, that the person  
15 was the author or recipient of the document; and

16 i. Any other person, only upon order of the Court or upon  
17 stipulation of the Producing Party and who has signed the "Agreement  
18 Concerning Information Covered by Confidentiality Order" attached hereto as  
19 Exhibit A.

20 **10. Persons With Access to Highly Confidential Material:** Except as  
21 specifically provided for in this or subsequent Court orders, Highly Confidential  
22 Material or its contents shall not be disclosed, summarized, described, or otherwise  
23 communicated or made available in whole or in part to any person or entity, directly  
24 or indirectly, other than the following:

25 a. Counsel of record in this action other than in-house counsel, and  
26 attorneys at outside law firms and paralegal assistants, technical,  
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1 administrative and clerical employees working under the direct supervision of  
2 such attorneys;

3 b. Subject to Section 11 hereof, experts or consultants necessary to  
4 assist counsel for parties that have appeared in this Litigation, and who have  
5 signed the “Agreement Concerning Information Covered by Confidentiality  
6 Order” attached hereto as Exhibit A;

7 c. The Court and persons employed by the Court;

8 d. Court reporters employed by the Court or the parties to transcribe  
9 testimony (in deposition or in court) or any other proceedings in this  
10 Litigation;

11 e. Graphics, translation, or design services retained by counsel for  
12 purposes of preparing demonstrative or other exhibits, provided such services  
13 have signed the “Agreement Concerning Information Covered by  
14 Confidentiality Order” attached hereto as Exhibit A;

15 f. Persons employed by jury or trial consulting services, provided  
16 such persons have signed the “Agreement Concerning Information Covered  
17 by Confidentiality Order” attached hereto as Exhibit A;

18 g. Commercial copy vendors retained by counsel for purposes of  
19 this Litigation, provided such vendors have signed the “Agreement  
20 Concerning Information Covered by Confidentiality Order” attached hereto as  
21 Exhibit A;

22 h. Any person indicated by a document to be an author, addressee,  
23 or copy recipient of the document, or as to whom there has been testimony,  
24 whether at deposition or trial or by declaration or affidavit, that the person  
25 was the author or recipient of the document; and

26 i. Any other person, only upon order of the Court or upon  
27 stipulation of the Producing Party, and who has signed the “Agreement  
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1 Concerning Information Covered by Confidentiality Order” attached hereto as  
2 Exhibit A.

3 11. **Qualification of Outside Experts and Consultants:** Notwithstanding  
4 paragraphs 9(b) and 10(b), Confidential Material or Highly Confidential Material  
5 may be provided to experts or consultants only to the extent necessary for such  
6 expert or consultant to prepare a written opinion, to prepare to testify, or to assist  
7 counsel for a party in this Litigation. Such Confidential Material or Highly  
8 Confidential Material shall not be disclosed to any such expert or consultant until  
9 after a period of ten (10) calendar days after service, by facsimile and regular mail,  
10 on all parties of identifying information for the expert or consultant, including  
11 his/her name, address and job title, the name and address of his/her employer and a  
12 current curriculum vitae including a list of all companies for which such person has  
13 consulted during the last three (3) years. The party receiving notice of such expert  
14 or consultant and service of such identifying information shall have ten calendar  
15 days from the date of such notice to object in writing to the provision of  
16 Confidential Material or Highly Confidential Material to the outside expert or  
17 consultant. Unless the parties otherwise resolve the objection, the objecting party  
18 shall have an additional ten calendar days from the date of service of the identifying  
19 information regarding the expert to file an appropriate motion to preclude the  
20 employment of the expert or consultant and/or disclosures of Confidential Material  
21 or Highly Confidential Material to him or her, and no Confidential Material or  
22 Highly Confidential Material that is the subject of the objection will be disclosed  
23 until the motion is decided. The times to respond as set out in this subparagraph  
24 shall not begin to run unless the identifying information served regarding the expert  
25 complies with the requirements set out herein.

26 12. Each person to whom Confidential or Highly Confidential Material  
27 may be disclosed that is also required to sign the “Agreement Concerning  
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1 Information Covered by Confidentiality Order” attached hereto as Exhibit A  
2 pursuant to Sections 9 and 10 shall do so prior to the time such Material is disclosed  
3 to him or her. Copies of any executed undertakings shall be disclosed to counsel for  
4 the Producing Party upon agreement of the parties or further order of the Court.

5       **13. Source Code Protocol:** Source code includes, but is not limited to,  
6 files containing program text in “C”, “C++”, assembler, VHDL, Verilog, and digital  
7 signal processor (DSP) programming languages. Source code further includes  
8 “make” files, link files, and other human-readable text files used in the generation  
9 and/or building of software directly executed on a microprocessor, microcontroller,  
10 or DSP. Source code does not include binary executable files and object code files.  
11 Source code and documents containing source code may be designated “Highly  
12 Confidential – Source Code.” The parties have agreed on the following protocol for  
13 the inspection of source code, which refers to human-readable text files used as  
14 input to computer programs that generate machine-readable files:

15           a. Unless otherwise agreed to in writing between the Producing  
16 Party and the Receiving Party or otherwise produced by the Producing Party  
17 directly to the Receiving Party, if source code designated as “Highly  
18 Confidential – Source Code” is to be made available for inspection, source  
19 code designated as “Highly Confidential – Source Code” shall only be  
20 provided, upon written request and after reasonable notice, on a single  
21 standalone computer (that is, a computer not connected to a network, Internet,  
22 or a peripheral device) at a secure location of the Producing Party’s choosing  
23 in San Diego County.

24           b. The Receiving Party (including the experts or consultants who  
25 may inspect the source code under this Confidentiality Order) may use and, to  
26 the extent necessary, load onto the secure computer searching or analytical  
27 tools for inspection of the source code, so long as the searching or other  
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1 analytical tools for inspection of the source code is disclosed by the  
2 Requesting Party at least two (2) business days in advance of the inspection,  
3 providing however that the Producing Party reserves all objections to any  
4 such searching or analytical tools. The Receiving Party may create a back-up  
5 copy of the source code on the stand-alone computer. The searching or  
6 analytical tools may annotate, number the lines of, and label the pages of, the  
7 back-up copy of the code. Any back-up copies will remain on the stand-alone  
8 computer and be subject to all of the provisions of this Confidentiality Order.

9 c. Source code printing protocol: The Producing Party shall make  
10 available a laser printer with commercially reasonable printing speeds for  
11 onsite printing during inspection of the code. The Receiving Party may print  
12 portions of the source code only when reasonably necessary to facilitate the  
13 Receiving Party's preparation of the case, including (1) when reasonably  
14 necessary to prepare any filing with the Court or to serve any pleadings or  
15 other papers on any other party, (2) to prepare internal attorney work product  
16 materials, or (3) to prepare other necessary case materials such as testifying  
17 expert reports, consulting expert written analyses and related drafts and  
18 correspondences. The Receiving Party shall print only such portions as are  
19 reasonably necessary for the purposes for which any part of the source code is  
20 printed. In no event may the Receiving Party print more than twenty-five  
21 (25) consecutive pages and no more than 500 pages of source code in  
22 aggregate during the duration of the case without prior written approval of the  
23 Producing Party.

24 Upon the Receiving Party's printing any such portions of source code,  
25 the printed pages shall be collected by the Producing Party. The Producing  
26 Party shall Bates number, copy, and label "HIGHLY CONFIDENTIAL –  
27 SOURCE CODE" any pages printed by the receiving party, and return them  
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1 to the Receiving Party within five (5) business days of printing. If the  
2 Producing Party objects based on a good-faith belief that the printed portions  
3 are not reasonably necessary to any case preparation activity as described  
4 above, the Producing Party shall make such objection known to the Receiving  
5 Party within five (5) business days of the printing of any such portions by the  
6 Receiving Party. If, after meeting and conferring, the Producing Party and the  
7 Receiving Party cannot resolve the objection, the Producing Party shall be  
8 entitled to seek a Court resolution of whether or not the printed source code in  
9 question is reasonably necessary to any case preparation activity. The parties  
10 may request that the Court resolve any such dispute on an expedited basis. In  
11 any event, any such motion must be in the form of a joint stipulation as  
12 provided for in Local Rules 37-1 and 37-2. In the absence of any objection,  
13 or upon resolution of any such dispute by the Court, the Producing Party shall  
14 provide one copy set of such pages to the Receiving Party within five (5)  
15 business days of the printing of such pages by the Receiving Party or, if  
16 applicable, resolution of a dispute by the Court, and shall retain one copy set.

17 d. The Receiving Party may designate up to two experts or  
18 consultants who meet the requirements of paragraph 10(b) to have access to  
19 the secure facility(ies) for inspection of the Disclosing Party's source code.  
20 The Receiving Party's counsel shall provide to outside counsel for the  
21 Disclosing Party the names of any individual who will require access to the  
22 secure facility at least three (3) business days before being granted access to  
23 the secure facility for the first time. Individuals who have been previously  
24 identified according to this paragraph may access the secure facility,  
25 consistent with the normal practice at the facility, without further approval,  
26 although the Disclosing Party shall be informed each time such person  
27 accesses the secured facility.  
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1           14.   **Exclusion of Individuals From Depositions:** Counsel for any  
2 Disclosing Party shall have the right to exclude from depositions any person who is  
3 not authorized by this Order to receive documents or information designated  
4 Confidential or Highly Confidential. Such right of exclusion shall be applicable  
5 only during periods of examination or testimony directed to or comprising  
6 information that is Confidential or Highly Confidential.

7           15.   The party or third party who produces or discloses its own Confidential  
8 Material or Highly Confidential Material is not to be precluded by this  
9 Confidentiality Order from disclosing or using that Confidential Material or Highly  
10 Confidential Material in any manner as it may deem fit, including in the context of  
11 patent prosecution.

12           16.   **Storage and Copies of Confidential Material or Highly**  
13 **Confidential Material:** The recipient of any Confidential Material or Highly  
14 Confidential Material that is provided under this Confidentiality Order shall  
15 maintain such information in a secure and safe area and shall exercise the same  
16 standard of due and proper care with respect to the storage, custody, use and/or  
17 dissemination of such information as is exercised by the recipient with respect to its  
18 own proprietary information; provided, however, that Defendants' designated in-  
19 house litigation counsel shall maintain any Confidential or Highly Confidential  
20 Material provided pursuant to this Confidentiality Order in a locked file cabinet in a  
21 segregated file or in the electronic equivalent that prevents access by any other  
22 personnel of the Receiving Party. Confidential Material or Highly Confidential  
23 Material shall not be copied, reproduced, summarized or abstracted, except to the  
24 extent that such copying, reproduction, summarization or abstraction is reasonably  
25 necessary for the conduct of this lawsuit. All such copies, reproductions, summaries  
26 and abstractions shall be subject to the terms of this Confidentiality Order, and  
27 labeled in the same manner as the designated material on which they are based.  
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1           17.   Without written permission from the Producing Party or a court order  
2 secured after appropriate notice to all interested persons, a party may not file in the  
3 public record in this action any Confidential Material or Highly Confidential  
4 Material. The parties shall comply with Local Rule 79-5 when seeking to file  
5 Confidential Material or Highly Confidential Material under seal.

6           18.   Agreeing to be bound by this Confidentiality Order, agreeing to and/or  
7 producing or receiving Confidential Material or Highly Confidential Material or  
8 otherwise complying with the terms of this Order *shall not*:

9               a.   Operate as an admission by any party that any particular  
10 Confidential Material or Highly Confidential Material contains or reflects  
11 business opportunities, affiliations or projections, or any other type of  
12 confidential information;

13              b.   Prejudice in any way the rights of the parties to object to the  
14 production of documents they consider not subject to discovery, or operate as  
15 an admission by any party that the restrictions and procedures set forth herein  
16 constitute adequate protection for any particular information deemed by any  
17 party to be Confidential Material or Highly Confidential Material;

18              c.   Prejudice in any way the rights of any party to object to the  
19 authenticity or admissibility into evidence of any document, testimony or  
20 other evidence subject to this Order;

21              d.   Prejudice in any way the rights of a party to seek a determination  
22 by the Court whether any Confidential Material or Highly Confidential  
23 Material should be subject to the terms of this Order;

24              e.   Prejudice in any way the rights of a party to petition the Court  
25 for a protective order relating to any purportedly confidential information; or

26              f.   Prevent a Disclosing Party to authorize disclosure of its own  
27 Confidential Material or Highly Confidential Material to any party.  
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1           **19. Use of Party's Own Information Allowed:** This Order has no effect  
2 on, and shall not apply to, a Producing Party's use or disclosure of its own  
3 Confidential Material or Highly Confidential Material for any purpose whatever.

4           **20. Challenging Designation of Materials:** A party shall not be obligated  
5 to challenge the propriety of a Confidential Material or Highly Confidential Material  
6 designation at the time made, and failure to do so shall not preclude a subsequent  
7 challenge thereto during the pendency of this litigation. In the event that any party  
8 to this litigation disagrees at any stage of these proceedings with such designation,  
9 such party may provide to the Disclosing Party written notice of its disagreement  
10 with the designation. The parties shall first try to resolve such dispute in good faith  
11 on an informal basis. If the dispute cannot be resolved, the party challenging the  
12 designation may request appropriate relief from the Court. The burden of proving  
13 that information has been properly designated as Confidential Material or Highly  
14 Confidential Material is on the party making such designation. Any challenged  
15 designation remains in force until the propriety of such designation has been  
16 determined, either by agreement of the parties or by order of the Court as outlined  
17 above.

18           **21. No Application to Public or Otherwise Available Information:** This  
19 Order shall not limit or restrict a Receiving Party's use of information that the  
20 Receiving Party can demonstrate: (i) was lawfully in the Receiving Party's  
21 possession prior to such information being designated as protected material in this  
22 Litigation and that the Receiving Party is not otherwise obligated to treat as  
23 confidential; (ii) was obtained without any benefit or use of protected material from  
24 a third party having the right to disclose such information to the Receiving Party  
25 without restriction or obligation of confidentiality; (iii) was independently  
26 developed by it after the time of disclosure by personnel who did not have access to  
27 the Producing Party's protected material; or (iv) has been published to the general  
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1 public.

2 If the Receiving Party believes that the Disclosing Party has designated  
3 information that is covered by any of the preceding categories as Confidential  
4 Material or Highly Confidential Material, the Receiving Party shall challenge the  
5 propriety of such designation using the procedure outlined in Section 20 above.  
6 Any challenged designation remains in force until the propriety of such designation  
7 has been decided as outlined above.

8 22. It is the present intention of the parties that the provisions of this Order  
9 shall govern discovery in this Litigation. The parties hereto agree to be bound by  
10 the terms of this Order pending the entry of this Order, or an alternative thereto  
11 which is satisfactory to all parties, by the Court, and any violation of the terms of  
12 this Order shall subject the offender to the same sanctions and penalties as if this  
13 Order had been entered by the Court. Nonetheless, the parties hereto shall be  
14 entitled to seek modification, or expansion of this Order by application to the Court  
15 and on notice to all parties and third parties that have designated information  
16 pursuant to this Order. Nothing in this Order shall be deemed to limit, prejudice, or  
17 waive any right of any party or person (a) to resist or compel discovery with respect  
18 to, or to seek to obtain additional or different protection for Discovery Material  
19 claimed to be protected work product or privileged, or Discovery Material as to  
20 which the Producing Party claims a legal obligation not to disclose; or (b) to seek to  
21 modify or obtain relief from any aspect of this Order.

22 23. **No Waiver of Privilege:** If information subject to a claim of attorney-  
23 client privilege, attorney work product, business strategy privilege or any other  
24 ground on which production of such information should not be made to any party is  
25 inadvertently produced to such party(ies), such production shall in no way prejudice  
26 or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work  
27 product, business strategy or other ground for withholding production to which the  
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1 Producing Party would otherwise be entitled. If a claim of inadvertent production is  
 2 made, pursuant to this paragraph, with respect to information then in the custody of  
 3 another party, that party shall promptly return to the claiming party or person that  
 4 material as to which the claim of inadvertent production has been made, and the  
 5 Receiving Party shall not use such information for any purpose until further order of  
 6 the Court. The party returning such material may then move the Court for an order  
 7 compelling production of the material, but said motion shall not assert as a ground  
 8 for entering such an order the fact or circumstance of the inadvertent production.

9       **24. Additional Parties or Attorneys:** In the event additional parties join  
 10 or intervene in this action, the newly joined party(ies) shall not have access to  
 11 Confidential Material or Highly Confidential Material until its counsel has executed  
 12 and, at the request of any party, filed with the Court its agreement to be fully bound  
 13 by this Order. If any additional attorneys make appearances in this Litigation, those  
 14 attorneys shall not have access to Confidential Material or Highly Confidential  
 15 Material until they execute a written agreement to be bound by this Order.

16       **25. Third Parties:** This Order applies to all Discovery Material produced  
 17 in this Litigation, whether produced before or after the entry of this Order and  
 18 whether produced by a party or third party. Third parties who produce Discovery  
 19 Material pursuant to this Order shall have the benefit of this Order, and shall be  
 20 entitled to enforce its terms. Third party witnesses may avail themselves of the  
 21 procedures and protections in this Order.

22       **26.** Except as specifically provided herein, the terms, conditions, and  
 23 limitations of this Confidentiality Order shall survive the termination of this action.  
 24 This Confidentiality Order shall survive the termination of this action. This  
 25 Confidentiality Order shall remain in force and effect until modified, superseded, or  
 26 terminated by consent of the parties or by order of the Court made upon reasonable  
 27 written notice. The Court retains jurisdiction even after termination of this action to  
 28

1 enforce this Confidentiality Order and to make such amendments, modifications,  
2 deletions and additions to this Confidentiality Order as the Court may from time to  
3 time deem appropriate.

4 27. This Confidentiality Order is without prejudice to the right of any party  
5 to seek other or further relief from the Court.

6 28. This Confidentiality Order shall not be construed as waiving any right  
7 to assert a claim of privilege, relevance, overbreadth, burdensomeness or other  
8 grounds for not producing material called for, and access to such material shall be  
9 only as otherwise provided by the discovery rules and other applicable laws.

10 29. **Conclusion of Litigation:** Within thirty (30) Court days after receiving  
11 notice of the entry of an order, judgment or decree finally disposing of this  
12 Litigation, all persons having received Confidential Material or Highly Confidential  
13 Material shall either return such material and all copies thereof to counsel for the  
14 Producing Party, or destroy all such Confidential Material or Highly Confidential  
15 Material and, in either case, certify that fact to counsel for the Producing Party.  
16 Outside counsel of record for the parties shall be entitled to retain court papers,  
17 depositions, trial transcripts and attorney work product, provided that such outside  
18 counsel of record shall not disclose Confidential Material or Highly Confidential  
19 Material to any person except pursuant to a court order or agreement with the party  
20 that produced the Confidential Material or Highly Confidential Material. All  
21 material returned to the parties or their counsel by the Court shall likewise be  
22 disposed of in accordance with this paragraph.

23 30. In the event that any Confidential or Highly Confidential information is  
24 used in any court proceeding in this Litigation or any appeal therefrom, such  
25 Confidential or Highly Confidential information shall not lose its status as  
26 Confidential or Highly Confidential through such use. Counsel shall comply with  
27 all applicable local rules and shall confer on such procedures that are necessary to  
28

1 protect the confidentiality of any documents, information and transcripts used in the  
 2 course of any court proceedings, including petitioning the Court to close the court  
 3 room.

4       **31. Protected Material Subpoenaed or Ordered Produced in Other**  
 5 **Actions:** If any person receiving documents covered by this Order (the “Receiver”)  
 6 is served with a subpoena, order, interrogatory, or document or civil investigative  
 7 demand (collectively, a “Demand”) issued in any other action, investigation, or  
 8 proceeding, and such Demand seeks Discovery Material that was produced or  
 9 designated under this Order by someone other than the Receiver, the Receiver shall  
 10 give prompt written notice by hand or facsimile transmission within five (5)  
 11 business days of receipt of such Demand to the person, party, or third party who  
 12 produced or designated the material as Confidential and shall object to the  
 13 production of such Confidential Material or Highly Confidential Material on the  
 14 grounds of the existence of this Order. The burden of opposing the enforcement of  
 15 the Demand shall fall upon the party who produced or designated the Confidential  
 16 Material. Unless the person, party, or third party who produced or designated the  
 17 Confidential Material obtains an order directing that the Demand not be complied  
 18 with, and serves such order upon the Receiver prior to production pursuant to the  
 19 Demand, the Receiver shall be permitted to produce documents responsive to the  
 20 Demand on the Demand response date. Compliance by the Receiver with any order  
 21 directing production pursuant to the Demand of any Confidential Discovery  
 22 Material or Highly Confidential Discovery Material shall not constitute a violation  
 23 of this Order.

24       **32. Advice Based On Discovery Material Allowed:** Nothing in this  
 25 Confidentiality Order shall bar or otherwise restrict any attorney from rendering  
 26 advice to his client with respect to this Litigation and, in the course of rendering  
 27 advice, referring to or relying generally on the examination of Confidential Material  
 28

1 or Highly Confidential Material; provided, however, that in rendering such advice  
 2 and in otherwise communicating with his client, the attorney shall not disclose the  
 3 contents of any Confidential Material or Highly Confidential Material produced by  
 4 another party if that disclosure would be contrary to the terms of this Confidentiality  
 5 Order.

6       **33. No Effect On Other Legal Obligations:** This Confidentiality Order  
 7 shall not abrogate or diminish any contractual, statutory or other legal obligation or  
 8 right of any party or person with respect to any Confidential Material or Highly  
 9 Confidential Material. The fact that information is designated Confidential Material  
 10 or Highly Confidential Material under this Confidentiality Order shall not be  
 11 deemed to be determinative of what a trier of fact may determine to be confidential  
 12 or proprietary.

13       **34. Redaction Allowed:** Any Producing Party may redact from the  
 14 documents and things it produces matter that the Producing Party claims is subject  
 15 to attorney-client privilege, work product immunity, a legal prohibition against  
 16 disclosure, or any other privilege or immunity. The Producing Party shall mark  
 17 each thing where matter has been redacted with a legend stating "REDACTED," as  
 18 appropriate, or a comparable notice. Where a document consists of more than one  
 19 page, at least each page on which information has been redacted shall be so marked.  
 20 The Producing Party shall preserve an unredacted version of each such document.  
 21 This provision shall not affect any obligation to provide a log of information  
 22 redacted or otherwise withheld on the basis of attorney-client privilege, work  
 23 product immunity, a legal prohibition against disclosure, or other privilege or  
 24 immunity.

25       **35. Violations of Confidentiality Order:** In the event that any person or  
 26 party should violate the terms of this Confidentiality Order, the aggrieved  
 27 Disclosing Party should apply to the Court obtain relief against any such person or  
 28

1 party violating or threatening to violate any of the terms of this Confidentiality  
2 Order. In the event that the aggrieved Disclosing Party seeks injunctive relief, it  
3 must petition the District Judge for such relief, which may be granted at the sole  
4 discretion of the District Judge. The parties and any other person subject to the  
5 terms of this Confidentiality Order agree that this Court shall retain jurisdiction over  
6 it and them for the purpose of enforcing this Confidentiality Order.

7 36. The parties may petition the Court for modifications of this  
8 Confidentiality Order.

9 37. **Headings:** The headings herein are provided only for the convenience  
10 of the parties, and are not intended to define or limit the scope of the express terms  
11 of this Confidentiality Order.

12  
13 Dated: April 08, 2013



United States Magistrate Judge  
JEAN P. ROSENBLUTH

**EXHIBIT A**

**AGREEMENT CONCERNING INFORMATION  
COVERED BY CONFIDENTIALITY ORDER**

I, \_\_\_\_\_, hereby acknowledge that I have received a copy of the Confidentiality Order entered in this action (Case No. SACV12-1580-DOC (JPRx)) in the United States District Court for the Central District of California (hereinafter, "the Confidentiality Order").

I have either read the Confidentiality Order or have had the terms of the Confidentiality Order explained to me by my attorney.

I understand the terms of the Confidentiality Order and agree to comply with and to be bound by such terms.

If I receive documents or information designated as Confidential or Highly Confidential, (as those terms are defined in the Confidentiality Order), I understand that such information is provided to me pursuant to the terms and restrictions of the Confidentiality Order.

I agree to hold in confidence and not further disclose or use for any purpose (other than is permitted by the Confidentiality Order) any information disclosed to me pursuant to the terms of the Confidentiality Order.

I hereby submit myself to the jurisdiction of the United States District Court for the Central District of California for resolution of any matters pertaining to the Confidentiality Order.

My address is:

\_\_\_\_\_  
\_\_\_\_\_

My present employer is:

\_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Respectfully submitted,

Dated: April 3, 2013

By: /s/ H. Larry Elam III

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Attorneys for Plaintiff MOHSEN  
REIHANIFAM

Dated: April 3, 2013

By: /s/ Lisa J. Damiani

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